(3)

No. 03-237

Supreme Court, U.S.
FILED
OCT 7 - 2003
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In The

Supreme Court of the United States

ROBERT M. KURTZ,

Petitioner,

v.

ROBERT AYERS, WARDEN,

Respondent.

On Petition For Writ Of Certiorari
To The Court Of Appeals
For The Ninth Circuit

SUPPLEMENTAL BRIEF RE PETITION FOR WRIT OF CERTIORARI

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5 pp

INTRODUCTION

Petitioner Robert M. Kurtz's underlying Petition for a Writ of Certiorari was filed in this Court last August 12, 2003. This is a habeas corpus matter challenging a state conviction and concerns the denial of a certificate of appealability by the Ninth Circuit Court of Appeals. (See App. A.)

After petitioner filed his Petition for a Writ of Certiorari, he noticed that the citations to the appendices in the body of the petition were incorrect, as they were based upon the appendices filed in the lower courts, not on the appendices presented to this Court. Hence petitioner now respectfully requests this Court to accept and consider this Supplemental Brief, pursuant to the Rules of the U.S. Supreme Court, Rule 15(8), which will correct these appendix citation errors to reflect the correct page numbers as paginated in the Petition for Writ of Certiorari.

This Court has authority to consider this Supplemental Brief as Rule 15(8) provides that a petitioner may "file a supplemental brief at any time while a petition for a writ of certiorari is pending, calling attention to . . . other intervening matter. . . ." Indeed, this Court has held that it wants such briefs to be filed in order to be advised of new factors that may affect its consideration of the case. Hence "counsel have a continuing duty to inform the Court of any development which may conceivably affect the outcome" of a case. (*Board of License Comm'rs of Tiverton v. Pastore*, 469 U.S. 238, 240, 83 L.Ed.2d 618, 105 S.Ct. 685 (1985); *Fusari v. Steinberg*, 419 U.S. 379, 391, 42 L.Ed.2d 521, 95 S.Ct. 533 (1975).)

Thus, petitioner submits this Supplemental Brief to aid the Court in its consideration of the underlying Petition for a Writ of Certiorari filed on August 12, 2003.

CORRECTIONS TO BODY OF PETITION

PAGE OF PETITION	EXISTING CITATION	CORRECT CITATION
1. Page 4	App. J, p. 13	App. J, pp. 12-13
2. Page 5	Insert after first full paragraph	See App. O, pp. 80-81
3. Page 8(1)	App. F, p. 13(7-11)	App. F, p. 15
4. Page 8(2)	Id., at pp. 13(12-15), 17(19-20)	App. F, pp. 15, 20
5. Page 8(3)	Id., at p. 17(6-18)	App. F, p. 20
6. Page 8(4)	Id., at p. 17(21-27)	App. F, pp. 20-21
7. Page 9(5)	Id., at pp. 17(28)-18(2)	App. F, p. 21
8. Page 9(6)	Id., at pp. 18(10)-20(2)	App. F, pp. 21-23
9. Page 10(7)	Id., at p. 20(4-18)	App. F, pp. 23-24
10. Page 10(8)	Id., at pp. 20-21	App. F, pp. 23-25
11. Page 10(9)	Id., at p. 22(14-24)	App. F, p. 26
12. Page 10(10)	Id., at p. 22(25-28)	App. F, p. 27
13. Page 11	See App. O, pp. 1-35	App. O, pp. 1-55
14. Page 11(A)	App. O, p. 2	App. O, p. 18
15. Page 11(A)(1)	Id., at p. 3	App. O, p. 20
16. Page 11(A)(2)	Id., at p. 6	App. O, p. 22
17. Page 11(B)	Id., at p. 9	App. O, p. 26

PAGE OF PETITION	EXISTING CITATION	CORRECT CITATION
18. Page 11(B)(1)	Id., at p. 10	App. O, p. 27
19. Page 11(B)(2)	Id., at p. 10	App. O, p. 28
20. Page 11(B)(3)	Id., at p. 13	App. O, p. 31
21. Page 12(C)	Id., at p. 18	App. O, p. 37
22. Page 12(D)	Id., at p. 19	App. O, p. 38
23. Page 12(A)	Id., at p. 25	App. O, p. 44
24. Page 12(B)	Id., at p. 26	App. O, p. 46
25. Page 12(C)	Id., at p. 29	App. O, p. 48
26. Page 12(D)	Id., at p. 30	App. O, p. 49
27. Page 12(E)	Id., at p. 32	App. O, p. 52
28. Page 12(A)	Id., at p. 34	App. O, p. 54
29. Page 13	See App. Q, pp. 4-10, 20-21	App. Q, pp. 8-14, 23-24
30. Page 14	App. O, pp. 38-53	App. O, pp. 58-75
31. Page 14	App. Q, pp. 13-18	App. Q, pp. 16-21
32. Page 14	App. R, pp. 5-9	App. R, pp. 7-11
33. Page 15	App. O, pp. 53-64	App. O, p. 86
34. Page 15	App. Q, pp. 11-12	App. Q, pp. 14-16
35. Page 16	App. F, p. 13(9-11)	App. F, p. 15
36. Page 16	Id., p. 13, fn. 5	App. F, p. 15, fn. 5
37. Page 17	Id., at pp. 13(11-15), 17(19-20)	App. F, pp. 15, 20
38. Page 21	Insert at end of cont'd paragraph & after (RT 779(10-11).)	App. O, pp. 28-29

PAGE OF PETITION	EXISTING CITATION	CORRECT CITATION
39. Page 24	Insert after (RT 828-829)	App. O, pp. 31-34
40. Page 25	Insert after (RT 944)	App. O, p. 29
41. Page 25	App. L, pp. 8-10	App. L, pp. 11-12
42. Page 25	See App. M [Ground #2]	See App. L, pp. 13-14 [Ground #2]
43. Page 26	App. F, pp. 22(14)-23(8)	App. F, pp. 26-27
44. Page 27	App. F, p. 13(7-11)	App. F, p. 15
45. Page 27	App. F, pp. 13, fn. 5, 17(19-26)	App. F, pp. 15, fn. 5, 20-21
46. Page 28	App. F, p. 28(22-26)	App. F, p. 34
47. Page 28	Id., at p. 29(1-5)	App. F, p. 34
48. Page 29	App. F, pp. 31(24)-32(12)	App. F, pp. 37-38
49. Page 29	App. F, pp. 34(2[illegible])-35(7)	App. F, p. 41

Dated: October 7, 2003

Respectfully submitted,

WILLIAM E. GILG
Attorney for Petitioner